



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0113]

Parts and Accessories Necessary for Safe Operation; Denial of an Exemption Application from the Entertainer Motorcoach Council

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Denial of exemption application.

SUMMARY: FMCSA denies an exemption application from the Entertainer Motorcoach Council (EMC) to allow its members to operate certain vehicles that do not meet the emergency exit requirements in the Federal Motor Carrier Safety Regulations (FMCSR). The FMCSRs require buses with a gross vehicle weight rating (GVWR) of more than 10,000 pounds, manufactured on or after September 1, 1994, to meet the emergency exit requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 217, “Bus Emergency exits and window retention and release,” in effect on the date of manufacture. FMVSS No. 217 requires side exits and at least one rear exit, but when the bus configuration precludes installation of an accessible rear exit, a roof exit is required in the rear half of the bus to provide a means of egress when the bus is overturned on either side. While EMC contends that “Entertainer Coaches” that do not have a rear or roof exit have emergency exit windows that open manually at the rear sides of the vehicle that provide openings large enough to admit unobstructed passage, it did not provide evidence to enable the Agency to conclude that motor carriers operating such vehicles could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the FMCSRs. On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption

(up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

EMC Application for Exemption

EMC applied for an exemption from 49 CFR 393.62(a) to allow motor carriers to operate certain “Entertainer Coaches” that do not comply with the regulation’s emergency exit requirements. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.62(a) of the FMCSRs requires buses with a GVWR of more than 10,000 pounds, manufactured on or after September 1, 1994, to meet the emergency exit requirements of FMVSS No. 217 in effect on the date of manufacture. FMVSS No. 217 requires all buses (other than school buses) to provide unobstructed openings for emergency exit which collectively amount, in total square centimeters, to at least 432 times the number of designated seating positions on the bus. At least 40 percent of the total required area of unobstructed openings shall be provided on each side of a bus. However, in determining the total unobstructed openings provided by a bus, no emergency exit, regardless of its area, shall be credited with more than 3,458 square centimeters of the total area requirement.

For buses with a GVWR of more than 10,000 pounds, FMVSS No. 217 requires that the unobstructed openings requirements be met by providing side exits and at least one rear exit. The rear exit must meet the requirements of S5.3 – S5.5 of the standard when the bus is upright and when the bus is overturned on either side, with the occupant standing facing the exit. When the bus configuration precludes installation of an accessible rear exit, a roof exit that meets the requirements of S5.3 – S5.5 of the standard when the bus is overturned on either side, with the occupant standing facing the exit, shall be provided in the rear half of the bus.

Neither the FMVSSs nor the FMCSRs define the term “Entertainer Coach.” In its application, EMC describes these vehicles as “motor vehicles constructed on a bus or MPV chassis which provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: Cooking, refrigeration, self-contained bathroom, heating and/or air conditioning, a potable water supply including a faucet and sink, and a separate 110-125 volt electric power supply. This definition generally tracks the definition of ‘motor home’ in the FMVSS and appropriately describes coaches that are built as temporary residential accommodations for the entertainment industry.”

In support of its application, EMC states:

EMC seeks this exemption because the rear exit and roof hatch requirements in FMVSS 217 and FMCSR 393.62(a) preclude the efficient and effective operation of Entertainer Coaches. As required by 49 C.F.R. Part 381.310(c)(5), Entertainer Coaches provide an equivalent level of safety when equipped with emergency exit windows at the rear sides of the vehicle that open manually and provide openings large enough to admit unobstructed passage. Entertainer Coaches are designed and used to provide temporary residential accommodations and, because the occupants are celebrities, their families and their staff, require an additional level of security to ensure security and protection for their occupants.

The requirement for rear exits in buses over 10,000 lbs. GVWR is intended to ensure a sufficient amount of rear egress for vehicles that carry a large number of passengers. The typical motorcoach is 45 feet in length and carry as many as 59 passengers. Entertainer Coaches, in contrast, typically carry less than 15 passengers, and many carry less than 10 passengers. EMC recognizes the importance of assuring access through the rear of the vehicles, even when the number of passengers is small. Such egress, however is readily available – as applied to Entertainer Coaches – by the emergency exit windows that come standard on the chassis generally used by the Entertainer Coach industry, the Prevost Entertainer 2000. Those windows allow for an egress area of 17” tall by 24” wide. The Prevost roof hatch allows for a similar egress area, 23” x 23”. As a practical matter, the egress area is equivalent. As a result, Entertainer Coaches with emergency exit windows offer an equivalent level of safety as those with a roof hatch...

Entertainer Coaches have an exemplary safety experience. Unlike the typical motorcoach passengers, these vehicle occupants are well acquainted with the vehicle. In particular, they are fully aware of the location and need for fast exit in the event of an emergency. Although fires can and do occur on these vehicles, the small number of occupants ensures safe exit from either the front or the back of the vehicle without the need for additional

roof hatches. Such fires, furthermore, typically come from the back of the bus and occur when the bus is upright, further offsetting the practical need for a rear exit that meets the specific requirements of FMVSS 217.

EMC states that “If the exception is not granted, the entertainers will suffer serious disruption to their tour schedules. Denial of the exemption will also lead to significant economic impacts due to the failure of the entertainers to be able to appear as scheduled. The substantial disruption is not merited by any insistence on the strict construction of any overly broad requirement that does not take the unique circumstances of Entertainer Coaches into account.”

Public Comments

On May 1, 2015, FMCSA published a notice of the EMC application and asked for public comment (80 FR 25002). The Agency received five comments, all opposed to EMC’s exemption application.

The National Transportation Safety Board (NTSB), Advocates for Highway and Auto Safety (Advocates), the Commercial Vehicle Safety Alliance (CVSA), the United Motorcoach Association (UMA), and an anonymous commenter all cited similar concerns in opposing the exemption application. The commenters noted that EMC had failed to demonstrate that an equivalent level of safety would be maintained in certain crash scenarios with only side emergency exit windows, but no rear and/or roof exits as required by FMVSS No. 217, specifically in a rollover crash scenario. For example, the NTSB stated “A vehicle lying on its side with exits located only on the sides would be difficult to evacuate from because the only available emergency exits would be above the occupants. This could require an occupant to climb or be lifted as high as the width of the vehicle. The NTSB does not consider that emergency exits on two sides of a vehicle provide an alternative for emergency evacuation equivalent to the current requirements, which include either roof or rear emergency exits.”

Similarly, CVSA stated “In the event of a crash that leaves the bus on its side, the side window emergency exits and the entry door (which is usually counted as an emergency exit) will likely be unusable, which is why the National Highway Traffic Safety Administration’s (NHTSA) Federal Motor Vehicle Safety Standards (FMVSS) require the rear window or roof emergency exits. The exemption request from EMC does not effectively demonstrate how an equivalent level of safety can be maintained.” The Advocates stated that “[t]he Applicants have not met the statutory and regulatory requirements for the exemption, including failing to provide an analysis of the safety impacts the requested exemption may cause and failing to provide information on the specific countermeasures to be undertaken to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.”

FMCSA Response: On October 14, 1967, the Federal Highway Administration published an advance notice of proposed rulemaking (ANPRM) concerning the possible establishment of a standard regarding bus side and rear windows, push-out type windows, and emergency exits (32 FR 14278). On August 15, 1970, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) proposing a standard that would require buses to meet minimum requirements in the above areas (35 FR 13025). The NPRM proposed that each bus, except school buses, have side and rear push-out windows which, when fully open, provide unobstructed openings for emergency exit. There were no provisions regarding roof exits in the NPRM.

On May 10, 1972, NHTSA adopted FMVSS No. 217, a new motor vehicle safety standard establishing minimum requirements for bus window retention and release to reduce the likelihood of passenger ejection in accidents and enhance passenger exit in emergencies (37 FR 9394). While the 1970 NPRM did not include provisions regarding roof exits, the final rule

permitted installation of an alternate roof exit when the bus configuration precludes provision of a rear exit, providing that the roof exit meets the release, extension, and identification requirements of the standard. Specifically, the final rule noted “The NHTSA has established this alternative in order to allow design flexibility *while providing for emergency egress in rollover situations*” [Emphasis added]. Notably, the emergency exit requirements for buses with a GVWR of more than 10,000 pounds have remained largely unchanged since the establishment of FMVSS No. 217 more than 40 years ago.

FMCSA agrees with the commenters. The EMC application did not provide sufficient evidence to demonstrate that an Entertainer Coach without rear and/or roof emergency exits would be able to provide an equivalent level of safety when compared to a compliant vehicle, specifically in a rollover crash scenario. The intent of the requirements for rear and roof emergency exits in S5.2.2.2 of FMVSS No. 217 is quite clear, in that those exits are required to meet the emergency exit release, opening, and identification requirements of the standard “when the bus is overturned on either side, with the occupant standing facing the exit.” Without the required rear and/or roof exits, emergency egress in rollover crash scenarios will likely be limited, possibly leading to increased numbers of fatalities and injuries in such crashes.

FMCSA Decision

Based on the above, FMCSA denies the EMC exemption application. FMCSA is unable to determine – as required for an exemption by 49 CFR 381.305(a) – that motor carriers would be able to maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

Issued on: November 30, 2015

T.F. Scott Darling, III
Acting Administrator

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